

PATENT  
Docket No. 529642000300

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Date of Deposit: March 17, 2004

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail PostOffice to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and is addressed to: MSDAC, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450

*Valerie Cohen*

Valerie Cohen

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the application of:

Hong-Xia ZHANG et al.

Serial No.: 10/617,623

Filing Date: July 10, 2003

For: PLANT FRUIT WITH ELEVATED  
POTASSIUM LEVELS

Examiner: Not Yet Assigned

Group Art Unit: 1632

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**PETITION PURSUANT TO 37 C.F.R. § 1.47(a)**

MS DAC  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Dear Sir:

This is a Petition under 37 C.F.R. §1.47(a) to accept this application is on behalf of inventor Eduardo Blumwald, one of the two co-inventors named in the above-captioned application. The other co-Inventor, Hong-Xia Zhang, refuses to sign the Declaration.

This Petition is further on behalf of Arcadia Biosciences, as the owner of this patent application. If this Petition is not granted, the applicant and his assignee will suffer irreparable damage by virtue of the delay in obtaining patent coverage for the subject matter claimed in this application.

Attached are copies of:

- Declaration for Utility Patent Application executed by Eduardo Blumwald;
- Assignment executed by Eduardo Blumwald;
- Declaration in Support of 37 CFR §1.47(a) Petition by Otis Littlefield;
- Various emails between attorney of record, Otis Littlefield, and nonsigning inventor; and
- Notice to File Missing Parts of Nonprovisional Application (copy).

#### **PERTINENT FACTS**

Attached is a "Declaration in Support of 37 CFR §1.47(a) Petition" by the undersigned, Otis Littlefield, evidencing that Hong-Xia Zhang had received the patent application, drawings, Declaration, and Assignment for his review and approval in the above-captioned application.

The other inventor, Eduardo Blumwald, has signed both the Declaration and Assignment. These documents are being relayed to the U.S. Patent and Trademark Office in a related transmittal document accompanying this Petition.

By his inaction, Hong-Xias Zhang has effectively refused to sign the Declaration and Assignment documents. Because of this inaction, Arcadia Biosciences petitions to prosecute the application without the signature of Mr. Poston.

#### **LAST KNOWN ADDRESS**

The last known address of Hong-Xia Zhang is:

44 James Park Square, Scarborough, Ontario, M1V 2E6, Canada

## REMARKS

The petitioners have been diligent in attempting to contact Hong-Xia Zhang. This Petition under 37 C.F.R. §1.47(a) should be granted to prevent loss of patent rights by the other joint applicant and by his employer, the assignee.


The enclosed papers are believed to be in compliance with 37 CFR §1.47(a).

Petitioners request the Commissioner to grant this Petition and to perfect the filing of this application by acceptance of the accompanying documents.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, petitioners petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 529642000300. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: March 17, 2004

Respectfully submitted,

By:   
Otis Littlefield  
Registration No. 48,751  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, California 94105-2482  
Telephone: (415) 268-6846  
Facsimile: (415) 268-7522



PATENT  
Docket No. 529642000300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of:

Hong-Xia ZHANG et al.

Serial No.: 10/617,623

Filing Date: July 10, 2003

For: PLANT FRUIT WITH ELEVATED  
POTASSIUM LEVELS

Examiner: Not Yet Assigned

Group Art Unit: 1632

**DECLARATION IN SUPPORT OF 37 CFR §1.47(a) PETITION**

I, Otis Littlefield, declare that I am an attorney with the law firm of Morrison & Foerster. I am a registered patent attorney (Reg. No. 48,751).

In July 2003, I converted a provisional application to the above-captioned non-provisional application. The provisional application was based on subject matter invented by Hong-Xia Zhang and Eduardo Blumwald, the inventors in this matter.

On July 10, 2003, I filed the above-captioned application. Prior to filing the application, drafts of the application and drawings were forwarded to both inventors for their review and final approval.

On January 14, 2004, I sent an email to Hong-Xia Zhang that included a full copy of the application (specification, sequence listing and figures) with a declaration to be signed by Hong-Xia Zhang (a copy of which has been included).

On January 14, 2004, Hong-Xia Zhang replied by email indicating that he wished to consult with his lawyer prior to signing.

On January 15, 2004, I sent an email to Hong-Xia Zhang to the reply-to address supplied by Hong-Xia Zhang requesting that he consult with his lawyer before February 17, 2004.

On March 10, 2004, I sent a follow-up email to Hong-Xia Zhang requesting that he sign the declaration by March 17, 2004. In that email, I outlined the significance of the declaration and included another complete copy of application for his review. In addition, I indicated that we would assume that he was refusing to sign the declaration if we did not hear from him by March 17, 2004.

As of March 17, 2004, I have not received a reply from Hong-Xia Zhang.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

3/17/04

Date

Otis Littlefield

Otis Littlefield

Cohen, Valerie L.

**From:** Littlefield, Otis B.  
**Sent:** March 11, 2004 10:12 AM  
**To:** Cohen, Valerie L.  
**Subject:** FW: Declaration for the patent application



COPY

For the file

-----Original Message-----

**From:** Littlefield, Otis B.  
**Sent:** Wednesday, March 10, 2004 10:36 AM  
**To:** 'hxzhang@iris.sipp.ac.cn'  
**Cc:** Ward, Michael R.  
**Subject:** Declaration for the patent application

Dear Hongxia,

You indicated via email on January 14, 2004 that you wanted to speak to a lawyer before signing the declaration. I wanted to touch base and see if you had spoken to a lawyer yet. If you have retained counsel, we would be happy to forward a copy of the declaration for his or her review. In either case, please let us know whether you refuse to sign the declaration by March 17, 2004 (next Wednesday) so that we may either submit the declaration to the United States Patent and Trademark Office or indicate to the Office that you refuse to sign. If we do not hear from you by March 17, 2004 we will assume that you are refusing to sign the declaration.

The purpose of the declaration is to identify those persons who are inventors of the subject matter claimed in a patent application. As a part of that, by signing the declaration, you state a number of items:

- that your name, address, and citizenship as set forth on the declaration is true and correct;
- that you believe that you and the other named inventor(s) (in this case Eduardo) are the original and first inventors of the subject matter claimed;
- That you have reviewed and understood the contents of the application, including the claims;
- That you acknowledge the duty to disclose to the patent office all information know to you to be material to patentability as defined in 37 cfr 1.56.

Please note that in making these statements, you are subject to punishment including fines, imprisonment or both (see 18 U.S.C. 1001) for willful false statements.

For your convenience, I have included copies of the application and declaration.

Best Regards,

Otis Littlefield  
Patent Attorney  
Morrison and Foerster  
425 Market Street  
San Francisco, CA 94105-2482  
Phone: (415) 268-6846  
Fax: (415) 268-7522



Blumwald Decl and Declaration (USE  
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Figures.pdf (549  
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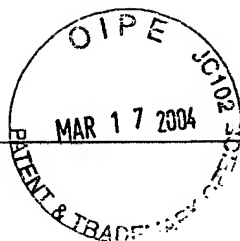
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Cohen, Valerie L.

**From:** Littlefield, Otis B.  
**Sent:** January 15, 2004 9:57 AM  
**To:** 'hxzhang@iris.sipp.ac.cn'  
**Cc:** Ward, Michael R.  
**Subject:** RE: Attached Files; 52964-20003.00



**COPY**

Hello Hongxia,

I understand completely. At this point, I am less concerned about the assignment, because the assignment can be signed and filed with the U.S. Patent and Trademark Office at any time. The declaration, however, needs to be filed soon. We would like to file the declaration by February 17, 2004. Therefore, we would appreciate if you would talk to your lawyer in the interim about the documents so that you can decide whether or not you will sign the declaration and/or assignment before that date.

We look forward to hearing from you.

Best regards,  
Otis

-----Original Message-----

**From:** hong zhang [mailto:hongzhang99@yahoo.com]  
**Sent:** Wednesday, January 14, 2004 6:30 PM  
**To:** Littlefield, Otis B.  
**Subject:** RE: Attached Files; 52964-20003.00

Dear Otis:

thank you for your reply and info, before i talk to my lawyer, i can not sign any documents since i am not clear what i am giving and getting by signing the documents you asked me to. sorry.

best,

hongxia zhang

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Do you Yahoo!?

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Cohen, Valerie L.

**From:** Littlefield, Otis B.  
**Sent:** January 14, 2004 1:24 PM  
**To:** 'hong zhang '  
**Cc:** Cohen, Valerie L.; Ward, Michael R.  
**Subject:** RE: Attached Files; 52964-20003.00



COPY

Dear Hongxia,

Sorry for the delayed response. Unfortunately we cannot provide you with a copy of the license agreement between the University of Toronto and Seaphire because it is a confidential document. Included with this email are electronic copies of the declaration and assignment signed by Eduardo Blumwald. Also attached to this email are the copies of the specification and drawings of the application as filed for you to review prior to signing the declaration. Please note that since we do not represent you, you should seek your own legal counsel for legal advice and answers to any legal questions that you may have.

We would appreciate your prompt reply, even if that is simply that you refuse to sign the declaration and/or assignment.

Best regards,

Otis Littlefield  
Patent Attorney  
Morrison and Foerster  
425 Market Street  
San Francisco, CA 94105-2482  
Phone: (415) 268-6846  
Fax: (415) 268-7522

-----Original Message-----

**From:** hong zhang [mailto:hongzhang99@yahoo.com]  
**Sent:** December 11, 2003 6:15 AM  
**To:** Cohen, Valerie L.  
**Subject:** RE: Attached Files; 52964-20003.00

Dear Valerie:

thank u 4 your message, i would like a copy of the documents with Dr. Blumwald's signature, please fax them 2 me, i will sign and fax them back to you.

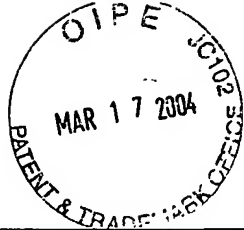
also: since the assignment and delcaration are

subject to the February, 2002 License Agreement between The University of Toronto  
Innovations Foundation, Seaphire International Inc., Eduardo Blumwald, Maris Apse, Gil  
Aharon, Wayne Snedden and The Governing Council of the University of Toronto.

i would like to have a copy of the licence agreement between the u of t and Seaphire before i sign

1/14/2004





Cohen, Valerie L.

**COPY**

**From:** hong zhang [hongzhang99@yahoo.com]

**Sent:** December 03, 2003 5:58 PM

**To:** Cohen, Valerie L.

**Subject:** Re: Plant Fruit with Elevated Potassium Levels patent application; Our Ref. 52964-20003.00

Valerie:

thank you, i am in shanghai china right now, will be back toronto canada on Dec. 18, i am a canadian citizen, my address in toronto is:

44 james park square  
scarborough, on, m1v 2e6  
canada

my fax no. in shanghai is : 86-21-64042385

please let me know what i need to do.

best,

hongxia zhang

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12/4/2003